

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

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In re:	)	
	)	
Super Chem Corporation	)	FIFRA Appeal No. 02-05
	)	
Docket No. FIFRA-9-2000-21	)	
	)	

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ORDER DISMISSING APPEAL

On June 5, 2002, Super Chem Corporation ("Super Chem") filed an appeal from an Initial Decision issued by Administrative Law Judge Carl C. Charneski ("ALJ"). See Appeal Petition (June 5, 2002). The Initial Decision, dated April 24, 2002, assesses an administrative penalty of \$45,000 for violation of section 12(a)(1)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act prohibiting the distribution or sale of a pesticide not registered with the United States Environmental Protection Agency.

The certificate of service accompanying the Initial Decision indicates that it was served on the parties by certified mail on the same day it was signed by the ALJ, April 24, 2002. Under section 22.30 of the Consolidated Rules of Practice, any appeal

from the Initial Decision had to be filed<sup>1</sup> with the Board within 30 days after it was served on the parties. 40 C.F.R.

§ 22.30(a). In addition, where, as here, an initial decision is served by mail, five days are added to the thirty-day appeal period. 40 C.F.R. § 22.7(c). Under these rules, the deadline for Super Chem to have filed an appeal from the Initial Decision was May 29, 2002. Super Chem's Appeal was not filed with the Board until June 5, 2002.<sup>2</sup> The Appeal is therefore untimely.<sup>3</sup>

As the Board has previously stated, "we do not think that it is asking too much of a potential appellant to consult the rules \* \* \* to ensure an adequate and full understanding of the process for perfecting an appeal." *In re Production Plated Plastics, Inc.*, 5 E.A.D. 101, 103-04 (EAB 1994) (dismissing appeal as untimely). A cursory examination of the applicable rules would have informed Super Chem of the thirty-day requirement. See *id.* at 104 (filing requirement appears in the regulation "in the

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<sup>1</sup> Documents are "filed" with the Board on the date they are received.

<sup>2</sup> The Appeal indicates that it was mailed on June 4, 2002.

<sup>3</sup> In its response to the petition, U.S. EPA Region IX asserted, among other things, that the appeal was untimely. See Reply Memorandum Opposing Super Chem Corporation's Notice of Appeal at 5-7. Super Chem has not filed a reply.

clearest of terms." ). Because Super Chem has failed to point out any special circumstances warranting relaxation of the deadline,<sup>4</sup> the appeal is hereby dismissed as untimely. See *In re Outboard Marine Corp.*, 6 E.A.D. 194 (EAB 1995) (dismissing appeal filed one day late by U.S. EPA Region V); *In re TRA Ind., Inc.*, EPCRA Appeal No. 96-2 (EAB, July 5, 1997) (Order Dismissing Appeal).<sup>5</sup>

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<sup>4</sup> See *In re B&B Wrecking and Excavating, Inc.*, 4 E.A.D. 16, 17 (EAB 1992) ("The time requirements for appeals must be followed unless special circumstances warrant relaxation."). In the present case, not only has Super Chem failed to identify any special circumstances, it has given no explanation whatsoever for its failure to file the appeal by the applicable deadline.

<sup>5</sup> Although the Board endeavors to construe petitions broadly, particularly where, as here, they are filed by persons unrepresented by legal counsel, "[n]onetheless, a litigant who elects to appear *pro se* takes upon himself or herself the responsibility for complying with the procedural rules and may suffer adverse consequences in the event of noncompliance." *In re Flying Lion, Inc.*, FIFRA Appeal No. 98-1 (EAB, Dec. 16, 1998) (Order Dismissing Appeal) (dismissing *pro se* appeal as untimely) (quoting *In re Rybond, Inc.*, 6 E.A.D. 614, 627 (EAB 1996)).

So ordered.<sup>6</sup>

ENVIRONMENTAL APPEALS BOARD

Dated: September 9, 2002

By: \_\_\_\_\_ /s/  
Scott C. Fulton  
Environmental Appeals Judge

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<sup>6</sup> The three-member panel deciding this matter is comprised of Environmental Appeals Judges Scott C. Fulton, Ronald L. McCallum, and Edward E. Reich. See 40 C.F.R. § 1.25(e)(1) (2001).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Dismissing Appeal, in the Matter of Super Chem Corp., FIFRA Appeal No. 02-5, were sent to the following persons in the manner indicated:

First Certified Mail,  
Return Receipt Requested:

Thomas Fessler, President  
Super Chem Corp.  
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By Pouch Mail:

David H. Kim (ORC-3)  
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Judge Carl C. Charneski  
Office of Administrative  
Law Judges (MC 1900L)  
U.S. EPA  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460

Dated: September 9, 2002

\_\_\_\_\_/s/  
Annette Duncan